

REMARKS

A. Amendment

Claim 13 has been amended. Claims 9–15 are presented for consideration. The amendment to claim 13 is intended only to clarify the claim, and no substantive change to the scope of any claim is intended.

For purposes of determining the applicability to the claim amendments herein of *Festo Corp. v. Shoketsu Kizoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722 (2002), the applicants do not admit that any claim amendment was made to avoid prior art, or for a substantial reason relating to patentability, or to narrow the scope of any claim. The applicants do not waive any rights to any subject matter and specifically reserve the right to rebut in an appropriate proceeding any presumption that may arise that any claim has been amended so as to implicate the principles enunciated in *Festo*.

B. 35 U.S.C. § 112, First Paragraph

In the September 12, 2006, Office Action (the “Office Action”) the examiner rejects claims 11–12 under 35 U.S.C. § 112, first paragraph, for asserted failure to comply with the written description requirement. The rejection is traversed, and reconsideration and withdrawal of the rejection are respectfully requested in view of the following.

As a threshold matter, the applicants respectfully state that they are unable to determine which limitation or limitations of claims 11 and 12, in the examiner’s view, lack written description in the specification. Section 2163(III)(A) of the MPEP (8th ed. [R-6]) states that the examiner, in rejecting claims for lack of written description, is to identify the claim limitation or limitations at issue. In the Office Action, however, the examiner first refers to line 5 of claim 9 and then refers to paragraph 8 on page 3 of the specification. (Office Action at 2.) The applicants are unable to find in this part of the examiner’s discussion any reference to, or quotation or paraphrasing of, any limitation of claim 11 or 12. The applicants therefore respectfully ask the examiner to identify explicitly the limitation or limitations at issue.

Moreover, each limitation of claims 11 and 12 is supported in the specification as originally filed. Beginning with claim 11, that claim reads:

11. A method according to claim 9, wherein the gripping mechanism has gripper elements between which an upper longitudinal side of a pouch can be gripped for each pouch to be picked up at least one of which is movable or has movable elements.

The use of gripper elements between which an upper longitudinal side of pouch can be gripped is disclosed at least on page 2 of the specification as originally filed, at lines 1–4, which read: “[The pouches] are in each case picked up on an opposite (upper) longitudinal side with a gripper mechanism The gripper elements are movable between the upper longitudinal sides of adjacent pouches.” Fig. 4 also depicts gripper elements 22 that are movable between the longitudinal sides of adjacent pouches 10.

The use of movable gripper elements to grip pouches is disclosed at least on page 2 of the specification as well, at lines 16–19, which (as amended) read:

It is appropriate for the pouches to be gripped in a clamping manner, i.e., for the gripper mechanism to have for each pouch to be picked up a pair of gripper jaws, where at least one is movable or has a movable element or between which a longitudinal side of a pouch can be gripped in a clamping manner.

Claim 12 reads:

12. A method according to claim 11, wherein said movable element is an extendable piston enabling a longitudinal side of a pouch to be picked up in clamping manner.

The use of an extendable piston as the movable element is disclosed at least on page 4 of the specification, at lines 3–5, which (as amended) read: “Alternatively in one or two gripper elements of a pair is an extensible piston or some other clamping element is provided to grasp the lateral edge of a pouch to be picked up in a clamping manner.”

Considering this disclosure in the specification, the applicants respectfully submit that the subject matter of claims 11 and 12 is adequately described in the specification as originally filed. Reconsideration and withdrawal of this rejection is therefore requested.

C. 35 U.S.C. § 112, Second Paragraph

The examiner rejects claims 9–15 under 35 U.S.C. § 112, second paragraph, asserting that the claims are indefinite for failure to particularly point out and distinctly claim the subject matter that the applicants regard as the invention. The rejection is traversed, and reconsideration and withdrawal of the rejection are respectfully requested in view of the following.

First, the examiner rejects claim 13, asserting that this claim is vague and indefinite. (Office Action at 3.) The examiner asserts that the reference to a main extension plane of each pouch is vague. It is respectfully submitted, however, that this rejection is moot in view of the amendment to claim 13 herein.

The examiner also asserts that the applicant recites a method for picking up and handling pouches in claim 9, but recites apparatuses in claims 10–15. The applicants note, however, that each of claims 10–15 explicitly recites that it is directed to a method.

For the above reasons, reconsideration and withdrawal of this rejection are therefore requested.

D. 35 U.S.C. § 102(b)

The examiner rejects claims 9 and 11–15 under 35 U.S.C. § 102(b) as anticipated by U.S. patent no. 3,954,165 to Snyder. The rejection is traversed, and reconsideration and withdrawal of the rejection are respectfully requested in view of the following.

The application discloses methods and apparatus for picking up filled and sealed pouches. (p. 1, lines 1–2.) A gripper mechanism may comprise substantially parallel, movable, finger-like gripper elements. (p. 2, lines 1–3.) The gripper elements may be inserted between vertically aligned pouches and may clamp the pouches and pick them up. (p. 2, lines 3–6, 16–20.)

Independent claim 9 reads:

9. A method for picking up and handling filled, sealed, rectangular pouches where each of said pouches comprises two lateral films with a U-shaped folded bottom film between the lateral films and where the pouches stand on one of two longitudinal sides and said pouches are arranged in parallel in a row, said pouches having a facing upper longitudinal side, and wherein said pouches are picked up with a gripper mechanism having finger-like gripper elements that are arranged in a comb-like manner, wherein the gripper elements are moved in a parallel path between adjacent upper longitudinal sides of adjacent pouches, in a longitudinal direction of the upper longitudinal sides, from the bottom side of the pouches.

The examiner asserts that Snyder anticipates this claim. Snyder discusses an automatic collating machine that is particularly adapted for packaging ice cream sandwiches that comprise soft, only partially frozen ice cream between two wafers. (Col. 4, lines 4–12.) As discussed in Snyder, items are fed from a conveyor belt onto carriers, lifted by the carriers, and then pushed by pusher elements into containers. (Col. 1, line 50–col. 2, line 6.)

But Snyder neither teaches nor suggests picking up pouches with a gripper mechanism. Snyder discusses depositing articles on a conveyor. (Col. 4, lines 22–25.) From the conveyor, the articles are fed to a carrier feed station that, in turn, feeds the articles onto a carrier. (Col. 4, lines 25–29.) Snyder neither teaches nor suggests that this involves picking up an article by *anything*, however. Snyder actually teaches the contrary:

The surfaces of the upper run of conveyor belts 45, fixed plate 40, pivotal plate 50 and carrier surface 54 at the feed position are all substantially horizontally disposed and coplanar with one another. The articles 22 are moved across the fixed plate 40 onto and across pivotal plate or bridge 50, and onto and across the carrier at the feed position, in end-to-end abutment by the force of successive articles 22 being *pushed* onto fixed plate 40 at its receiving end 44. *The first article pushed onto fixed plate 40 is pushed forward to the carrier by the second article, both the first and second articles are further pushed by the third article, and then so on,*

such that the articles move across the plates of the feed station and the carrier in end-to-end abutment which, of course, is the relationship desired. *Thus, a separate mechanism is not required to move the articles from the conveyor onto and across the carrier.*

(Col. 5, lines 17–33 (emphasis added).)

Snyder discusses the carrier elevating the articles, but the carrier is not a gripper, and it does not pick up any article. Fig. 1 of Snyder clearly shows space between each article and the carrier above it, which is inconsistent with the carrier or carriers being a gripper. Moreover, the articles merely rest on the carriers, and gravity, not gripping, keeps them there. Nor do the carriers pick up any article: the most that can be said is that they lift articles from below, which is not the same thing.

Nor do the pusher members pick up any article, according to Snyder. Rather, as Snyder discusses, the pusher members merely push the articles into adjacent containers. (Col. 7, lines 13–17.) The pushers therefore cannot correspond to the gripper elements of claim 9.

The examiner asserts that the L-shaped retaining elements (Fig. 5, no. 72) of Snyder are the grippers of claim 9. (Office Action at 6.) But, contrary to claim 9, these elements do not pick up anything. According to Snyder, they merely hold an article still on the pivotal plate of the carrier feed station until a new carrier is moved to the feed position. (Col. 5, line 58–col. 6, line 5.) The retaining elements never change the vertical position of any article, and the pivotal plate, not the retaining elements, supports the article against gravity. (*Id.*; Fig. 5.)

Nor are the retaining elements arranged in a substantially comb-like manner, as claim 9 also requires. It is well known that a comb commonly includes an extended base, from which several thin, substantially parallel teeth extend and are substantially perpendicular to the base. The gripper mechanism 20 of Fig. 4 of the application depicts one such possible arrangement. In contrast, Fig. 5 of Snyder depicts two bases, facing each other, and a single retaining element extends from each one. It is respectfully submitted that this configuration of the retaining elements in Snyder cannot be considered “comb-like” under any reasonable interpretation of that term.

Nor are the retaining elements of Snyder moved in a parallel path between adjacent upper longitudinal sides of adjacent pouches, as claim 9 also requires. To the contrary, the retaining elements discussed in Snyder hold an article stationary by exerting force on the sides of a single article. (Col. 6, lines 5–8.) Figs. 3, 4, and 5 of Snyder make clear that no part of the L-shaped element that holds the article is ever inserted between adjacent articles.

For the foregoing reasons, it is respectfully submitted that Snyder does not anticipate claim 9 and that claim 9 is therefore allowable over Snyder. Claims 10–15 each depend directly or indirectly upon claim 9, and it is therefore submitted that these claims are allowable over Snyder based on their inclusion of allowable subject matter.

E. 35 U.S.C. § 103

The Office Action also rejected claims 9–11 and 13–15 under 35 U.S.C. § 103(a) as obvious over U.S. patent no. 4,768,642 to Hunter in view of U.S. patent no. 3,822,528 to Carlsson *et al.* The rejection is traversed, and reconsideration and withdrawal of the rejection are respectfully requested in view of the following.

For a claimed invention to be rejected as obvious under section 103, the invention *as a whole* must be obvious in view of the prior art. MPEP § 2141.02 (8th ed. [R-6] 2007). A conclusory statement that the claimed invention is obvious is insufficient, moreover. MPEP § 2142. Rather, the examiner must articulate reasoning with some rational undermining to support the legal conclusion of obviousness. *Id.*

The examiner writes:

[I]t would have been obvious to those skilled in the art to modify the gripper element (28) of Hunter (4,768,642) by providing an end plate (12) of Carlsson *et al.* (3,822,528) on the distal ends of the Hunter's horizontal plate (28) so that the modified Hunter's device not only push the articles but also pick up the plurality of articles or pouches and moved to the table (5) (Fig. 1). Also note that it would have been obvious to those skilled in the art to provide the orientation of each pouch between fins (16, 16) of

the conveyor (12) as a horizontal orientation to stabilize the larger pouches and firmly handle the pouches.

(Office Action at 5.) The examiner therefore appears to rely on “the familiar teaching-suggestion-motivation (TSM) rationale” to conclude that the claimed invention is obvious. MPEP § 2141(III). But TSM fails to support this conclusion, in part because Hunter and Carlsson, alone and in combination, fail to teach or suggest all claim limitations.

Specifically, neither Hunter nor Carlsson teaches or suggests a gripper mechanism having finger-like gripper elements. The examiner does not suggest that Carlsson provides this limitation, and the applicants respectfully submit that Carlson in fact does not teach or suggest it.

Hunter discusses a system of conveyor belts that may handle individually packaged items that may be compressed before being packed in a larger container. The belt includes “material handling devices,” between which articles may be compressed. But it is apparent from Figs. 1–5 of Hunter that the material handling devices are not finger-like, as claim 9 requires, but are, to use Hunter’s terminology, “vanes.”

Nor would it make sense to use finger-like gripper elements to handle articles in connection with the subject matter discussed in Hunter. Figs. 1, 1A, and 2 of Hunter depict articles being fed onto a conveyor belt member (12, 14) from above. The articles land between two material handling devices (Fig. 2, 86 & 88) which receive them. Moreover, the figures make clear that the belts discussed in Hunter are open on their sides. In such a configuration, use of finger-like gripper elements—*i.e.*, long, narrow elements, such as Fig. 4 of the application depicts—would almost certainly cause the articles to fall off the belt to the sides.

Additionally, finger-like gripper elements would be unsuitable to compress articles as Hunter discusses. To the contrary, it is apparent that finger-like elements would exert pressure on only a narrow strip of the gripped article. The article would not be compressed in a way that increased the number of articles that could be put in a container, and such compression would therefore be inconsistent with the purpose discussed in Hunter.

In the Office Action, the examiner asserts that Hunter discloses handling the articles by a gripper mechanism having finger-like grippers, citing items 26 and 28 of Figs. 1 and 1A. (Office Action at 5.) But the cited items can in no way be considered grippers. As discussed in Hunter, the prongs (26) *push* the articles. (Col. 3, lines 14–18.) Pushing and gripping are entirely different activities, and a pusher and gripper are, similarly, different objects.

Nor are the prongs discussed in Hunter moved between adjacent upper longitudinal sides of adjacent pouches, as claim 9 requires. Indeed, such movement would be inconsistent with the principle of operation of Hunter. If the prongs were movable between adjacent articles, they would be unsuited for pushing those same articles off of the conveyor, as they do in Hunter.

Nor do Hunter or Carlsson, alone or in combination, teach or suggest picking up pouches with a gripper mechanism. It is apparent from the Figs. 1–5 of Hunter that the articles are always supported from below. This is made explicit in connection with Fig. 3, where Hunter says, “The lip 90 on the material handling device 86 prevents the wrapped pad 70 from dropping below the level of lip 90 on the material handling device 86.”

Carlsson is, if anything, even more explicit: “It should be noted that, throughout the described sequence, the bags are at no time left unsupported, neither laterally nor vertically.” (Col. 3, lines 63–65.) The bags are not picked up by grabbers, but are always supported from below by the conveyor belt. (Col. 3, line 65–col. 4, line 4.)

Nor would anyone look to Carlsson in any connection with using grippers to pick up or otherwise handle articles, because Carlsson teaches away from such use. Carlsson discusses mechanical packing of bags that contain fragile, crushable, or very light products such as potato chips, sweets, pastries, cakes, and so forth. (Col. 1, lines 6–9.) According to Carlsson, the purpose of the discussed apparatus is to prevent bags from being squeezed in a way that causes crushing of their contents. (Col. 1, lines 16–20.) But such squeezing is exactly what would be expected to happen if grabbers clamped onto an article to pick it up.

For these reasons, the applicants respectfully submit that claim 9 is allowable over Hunter in view of Carlsson. Claims 10–15 depend directly or indirectly upon claim 9, and it is therefore submitted that these claims are also allowable over the cited references.

F. Conclusion

For these reasons, the applicants respectfully request that the examiner withdraw the rejections and allow the claims. To expedite prosecution of this application, the examiner is invited to call the applicants' undersigned representative to discuss any issues relating to this application.

Respectfully submitted,

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